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5 **UNITED STATES DISTRICT COURT**
6 **WESTERN DISTRICT OF WASHINGTON**
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9 SQWISH WORLD, LLC
10 vs.
11 THE ORB FACTORY, LTD
12 Defendant.

13 Plaintiff, Civil Action No. 18-00528
14
15 JURY TRIAL DEMANDED

16 **COMPLAINT**
17
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19 Plaintiff Sqwish World, LLC (“Plaintiff” or “Sqwish World”), by and through its
20 undersigned attorneys, alleges the following for its complaint against Defendant ORB,
21 formally known as “The Orb Factory, LTD” (“Defendant” or “Orb”):
22
23

24 **I. PARTIES**
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- 1.1 Sqwish World is a limited liability company organized and existing under the
laws of the state of Arizona and having a place of business located at 2610 E.
Mohawk Ln. #120, Phoenix, AZ 85050, USA.
1.2 On information and belief, Defendant is a Limited Company organized and
existing under the laws of the province of Nova Scotia, Canada and having a
place of business located at 225 Herring Cove Road, Halifax, Nova Scotia, B3P
1L3, Canada.

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Tom Hendrickson
SEATTLE PATENT GROUP
4020 148TH Ave NE, Suite D
REDMOND, WASHINGTON 98052
TELEPHONE (425) 202-7969
tom@seattlepatentgroup.com

II. JURISDICTION AND VENUE

- 2.1 This Court has subject matter jurisdiction under 28 U.S.C. §1331 and 15 U.S.C. §1121 because this action arises under the federal trademark and unfair competition laws of the United States, Title 15 Chapter 22 of the United States Code.
 - 2.2 This Court has personal jurisdiction over Defendant because Defendant has conducted, and continues to conduct, business in this judicial district and, on information and belief, has engaged in activities related to Sqwish World's claims of unfair competition and federal trademark infringement that establish minimum contacts with the State of Washington, including having committed acts of federal unfair competition and federal trademark infringement in this judicial district, and the exercise of personal jurisdiction over Defendant is reasonable and fair. Personal jurisdiction over Defendant may be established under Fed.R.Civ.P. 4(k)(1)(A) and/or Fed.R.Civ.P. 4(k)(2).
 - 2.3 Venue is proper in this judicial district pursuant to 28 U.S.C. §1391.

III. COMMON ALLEGATIONS

- 3.1 Sqwish World sells toys and computer software under the registered trademarks “SOFT’N SQUISHY” (US Registration #4019102), “IF IT’S SOFT ‘N SQUISHY, IT BELONGS IN SQWISHLAND” (US Registration #4052596), “SQWISH LAND” (US Registration #3872820), “SQWISHLAND” (US Registration #4055135), “SQWISHPAK” (US Registration #4271877), and “SQWISHCHARM” (US Registration #4635684), among others.
 - 3.2 Registration of the mark “SOFT’N SQUISHY” was granted by the United States Patent and Trademark Office (“USPTO”) on August 30, 2011, while registration of the mark “IF IT’S SOFT ‘N SQUISHY, IT BELONGS IN SQWISHLAND” was granted by the USPTO on November 8, 2011.

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Tom Hendrickson
SEATTLE PATENT GROUP
4020 148TH Ave NE, Suite D
REDMOND, WASHINGTON 98052
TELEPHONE (425) 202-7969
tom@seattlepatentgroup.com

3.3 Plaintiff operates an interactive video game through the website <http://sqwishland.com> where Plaintiff's products and marks are promoted.

3.4 On information and belief, The Orb Factory is a toy manufacturer located in Halifax, Nova Scotia, Canada which was incorporated in 1990. Its products include jewelry, room decors, notes, diaries, cards, jewelry boxes, and magnetic art kits, as well as imaginative play, sparkling, pre-school fun, craft, and activity supplies. The company sells its products through retailers in Canada, the United States, and internationally. The Orb Factory Limited was incorporated in 1990 and is based in Halifax, Canada.

3.5 Sqwish World sells its trademarked products on-line through its website, <https://shop.sqwishland.com>, through brick and mortar retail stores, e.g., Toys 'R Us, via vending machines located at brick and mortar retail stores, as well as through other on-line retailers such as Amazon.com.

3.6 Since January of 2011, Sqwish World has expended substantial resources in the promotion and advertising of its marks "SOFT'N SQUISHY" and "IF IT'S SOFT 'N SQUISHY, IT BELONGS IN SQWISHLAND". Images representing Plaintiff's products are attached as Exhibit A.

3.7 Sqwish World's use of its marks, "SOFT'N SQUISHY" and "IF IT'S SOFT 'N SQUISHY, IT BELONGS IN SQWISHLAND", has been substantial and continuous since January of 2011. A Combined Declaration of Use and Incontestability Under Sections 8 & 15 was filed on the mark "SOFT'N SQUISHY" on September 1, 2016. See attached Exhibit B₁. A Combined Declaration of Use and Incontestability Under Sections 8 & 15 was filed on the mark "IF IT'S SOFT 'N SQUISHY, IT BELONGS IN SQWISHLAND" on April 26, 2017. See attached Exhibit B₂.

3.8 Orb filed intent to use applications on May 12, 2017, for the mark "SOFT'N SLO SQUISHIES" as a standard character (i.e., word) mark and as a mark comprised of words, letters, and/or numbers in stylized form under Serial Numbers 87447533 and 87447835, respectively.

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Tom Hendrickson
SEATTLE PATENT GROUP
4020 148TH Ave NE, Suite D
REDMOND, WASHINGTON 98052
TELEPHONE (425) 202-7969
tom@seattlepatentgroup.com

- 3.9 On information and belief, Defendant makes toy characters and toy baked goods, along with toy fruit, which it sells under the brand name “SOFT’N SLO SQUISHIES”. See attached Exhibit C.
 - 3.10 Defendant received an office action from the USPTO on August 17, 2017, informing them that their applications were being challenged because, inter alia, of a likelihood of confusion with Plaintiff’s marks “SOFT’N SQUISHY” and “IF IT’S SOFT ‘N SQUISHY, IT BELONGS IN SQWISHLAND”. See attached Exhibits D₁ and D₂.
 - 3.11 Upon learning of Orb Factory’s use of its marks, Plaintiff made demands that Defendant cease and desist from using its marks. See attached Exhibit E. Defendant has so far refused and has denied that any “actual confusion” is occurring.
 - 3.12 A simple internet search of the term “SOFT’N SQUISHY” demonstrates that when this term is typed into the search engines Bing.com, Yahoo.com, or Google.com, Defendant’s products are among the very first search results displayed. See attached Exhibits F₁, F₂, and F₃. A similar result occurs when the term “SOFT’N SQUISHY” is typed into the on-line retailers Amazon.com and Ebay.com. See attached Exhibits G₁ and G₂.

IV. COUNT I – FEDERAL TRADEMARK INFRINGEMENT OF
REGISTRATION #4019102

- 4.1 Sqwish World repeats and realleges the allegations contained in paragraphs I through III as if fully set forth herein.
 - 4.2 Defendant has used in interstate commerce, without authorization from Sqwish World, the mark “SOFT’N SQUISHY” in connection with the marketing, advertising, promotion, and sale of their toys.
 - 4.3 Defendant’s use of the mark “SOFT’N SQUISHY” is likely to have caused confusion, to have caused mistake, and/or to have deceived purchasers as to the

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Tom Hendrickson
SEATTLE PATENT GROUP
4020 148TH Ave NE, Suite D
REDMOND, WASHINGTON 98052
TELEPHONE (425) 202-7969
tom@seattlepatentgroup.com

1 source, of Defendant's toys or as to Defendant's affiliation, connection, approval,
2 sponsorship, or association with Sqwish World.

3 4.4 Defendant's actions constitute infringement of Sqwish World's federally
4 registered trademark for "SOFT'N SQUISHY" in violation of Section 32(a) of the
Lanham Act, 15 U.S.C. §1114.

5 4.5 Defendant's infringing conduct has caused damage to Sqwish World's business,
6 reputation, goodwill, profits, and the strength of Sqwish World's federally
7 registered "SOFT'N SQUISHY" trademark.

8 4.6 On information and belief, Defendant was actively aware of Sqwish World and its
9 "SOFT'N SQUISHY" federal trademark registration when they began selling
their toys, yet proceeded anyway to use the mark "SOFT'N SQUISHY" in
10 connection with their toys, thus rendering Defendant's infringement willful and
11 deliberate.

12

13 **V. COUNT II – FEDERAL TRADEMARK INFRINGEMENT OF**
14 **REGISTRATION #4052596**

15 5.1 Sqwish World repeats and realleges the allegations contained in paragraphs I
through IV as if fully set forth herein.

16 5.2 Defendant has used in interstate commerce, without authorization from Sqwish
World, the mark "IF IT'S SOFT 'N SQUISHY, IT BELONGS IN
17 SQWISHLAND" in connection with the marketing, advertising, promotion, and
18 sale of their toys.

19 5.3 Defendant's use of the mark "IF IT'S SOFT 'N SQUISHY, IT BELONGS IN
SQWISHLAND" is likely to have caused confusion, to have caused mistake,
20 and/or to have deceived purchasers as to the source, of Defendant's toys or as to
21 Defendant's affiliation, connection, approval, sponsorship, or association with
22 Sqwish World.

23 5.4 Defendant's actions constitute infringement of Sqwish World's federally
24 registered trademark for "IF IT'S SOFT 'N SQUISHY, IT BELONGS IN

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Tom Hendrickson
SEATTLE PATENT GROUP
4020 148TH Ave NE, Suite D
REDMOND, WASHINGTON 98052
TELEPHONE (425) 202-7969
tom@seattlepatentgroup.com

- 1 SQWISHLAND” in violation of Section 32(a) of the Lanham Act, 15 U.S.C.
2 §1114.
- 3 5.5 Defendant’s infringing conduct has caused damage to Sqwish World’s business,
4 reputation, goodwill, profits, and the strength of Sqwish World’s federally
5 registered “IF IT’S SOFT ‘N SQUISHY, IT BELONGS IN SQWISHLAND”
trademark.
- 6 5.6 On information and belief, Defendant was actively aware of Sqwish World and its
7 “IF IT’S SOFT ‘N SQUISHY, IT BELONGS IN SQWISHLAND” federal
8 trademark registration when they began selling their toys, yet proceeded anyway
9 to use the mark “SOFT’N SQUISHY” in connection with their toys, thus
rendering Defendant’s infringement willful and deliberate.

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11 **VI. COUNT III – FEDERAL UNFAIR COMPETITION (FALSE**
12 **DESIGNATION OF ORIGIN OR SPONSORSHIP)**

- 13 6.1 Sqwish World repeats and realleges the allegations contained in paragraphs I
14 through V as if fully set forth herein.
- 15 6.2 Sqwish World’s “SOFT’N SQUISHY” trademark, which has been used in
connection with Sqwish World’s products since at least Jan 20, 2011, is inherently
16 distinctive and has acquired secondary meaning through long and sustained use in
interstate commerce and through substantial advertising, promotion, and sales.
- 17 6.3 Defendant has used “SOFT’N SQUISHY” and is continuing to use, in interstate
commerce and without authorization from Sqwish World in connection with the
marketing, advertising, promotion, and sale of their toys.
- 18 6.4 Defendant’s use of the mark “SOFT’N SQUISHY” is likely to cause confusion, to
cause mistake, and/or to deceive purchasers as to the source of Defendant’s toys
or as to Defendant’s affiliation, connection, approval, sponsorship, or association
with Sqwish World.

- 6.5 Defendant's actions constitute false designation of origin and false representation in connection with the sale, distribution, and related interstate commercial activity of their toys in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125.
 - 6.6 Defendant's unfair competition in connection with the use of the mark "SOFT'N SQUISHY" in interstate commerce has caused, is causing, and will continue to cause damage to Sqwish World's business, reputation, goodwill, profits, and the strength of the "SOFT'N SQUISHY" trademark.
 - 6.7 On information and belief, Defendant was actively aware of Sqwish World and its use of the "SOFT'N SQUISHY" trademark when they began selling their toys, yet proceeded anyway to use the mark "SOFT'N SQUISHY" in connection with their toys, and are continuing to sell their toys, thus rendering Defendant's engagement in unfair competition willful and deliberate.

**VII. COUNT IV – COMMON LAW TRADEMARK INFRINGEMENT AND
UNFAIR COMPETITION**

- 7.1 Sqwish World repeats and realleges the allegations contained in paragraphs I through VI as if fully set forth herein.
 - 7.2 Defendant has used in interstate commerce, without authorization from Sqwish World, the mark “SOFT’N SQUISHY” in connection with the marketing, advertising, promotion, and sale of their toys.
 - 7.3 Defendant’s use of “SOFT’N SQUISHY” is likely to cause confusion, to cause mistake, and/or to deceive as to the source of origin of Defendant’s goods or services.
 - 7.4 Defendants actions in the State of Washington constitute trademark infringement and unfair competition under the Common Law of Washington.
 - 7.5 Plaintiff has been irreparably injured and will continue to be irreparably injured unless the conduct of Defendant in the State of Washington is preliminarily and permanently enjoined.

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Tom Hendrickson
SEATTLE PATENT GROUP
4020 148TH Ave NE, Suite D
REDMOND, WASHINGTON 98052
TELEPHONE (425) 202-7969
tom@seattlepatentgroup.com

1 7.6 Upon information and belief, Defendant undertook the adoption of “SOFT’N
2 SQUISHY” willfully, or with reckless intention of trading upon the good will of
3 Plaintiff.

4 **VIII. COUNT V – VIOLATION OF THE WASHINGTON STATE**
5 **CONSUMER PROTECTION ACT, RCW 19.86, et seq.**

6 8.1 Sqwish World repeats and realleges the allegations contained in paragraphs I
7 through VII as if fully set forth herein.
8 8.2 On information and belief, Defendant has used in commerce, without
9 authorization from Sqwish World, the mark “SOFT’N SQUISHY” in connection
10 with the marketing, advertising, promotion, and sale of their toys.
11 8.3 Defendant’s use of “SOFT’N SQUISHY” is likely to cause confusion, to cause
12 mistake, and/or to deceive as to the source of origin of Defendant’s goods or
13 services.
14 8.4 Defendant’s actions in the State of Washington constitute trademark infringement
15 and unfair competition under the Common Law of Washington and are therefore
16 unfair or deceptive (misleading).
17 8.5 The public interest is affected by Defendants’ continued and repeated deceptive
18 conduct.
19 8.6 Plaintiff has been irreparably injured and will continue to be irreparably injured
20 unless the conduct of Defendant in the State of Washington is preliminarily and
21 permanently enjoined.
22 8.7 Upon information and belief, Defendant undertook the adoption of “SOFT’N
23 SQUISHY” willfully or with reckless intention of trading upon the good will of
24 Plaintiff.

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Tom Hendrickson
SEATTLE PATENT GROUP
4020 148TH Ave NE, Suite D
REDMOND, WASHINGTON 98052
TELEPHONE (425) 202-7969
tom@seattlepatentgroup.com

IX. RELIEF REQUESTED

WHEREFORE Sqwish World respectfully requests that this court enter a judgment that:

- A. Finds Defendant has infringed Sqwish World's federally registered trademark for "Soft'n Sqwishi" in violation of 15 U.S.C. §1114;
 - B. Finds Defendant has infringed Sqwish World's federally registered trademark for "If It's Soft'n Sqwishi It Belongs in Sqwishland!" in violation of 15 U.S.C. §1114
 - C. Orders Defendant to recall and surrender for destruction all products, advertisements, and other materials and uses constituting trademark infringement or unfair competition against Plaintiff's rights;
 - D. Orders Defendant and any affiliated officers, directors, agents, servants, employees, successors, assigns, and all persons in active concert or participation with them, be permanently enjoined from infringing Sqwish World's federally registered "SOFT'N SQUISHY" and "IF IT'S SOFT 'N SQUISHY IT BELONGS IN SQWISHLAND!" trademarks.
 - E. Awards to Sqwish World profits gained by Defendant as a result of Defendant's federal trademark infringement and federal unfair competition, increased to an amount this court deems just, pursuant to 15 U.S.C. §1117;
 - F. Awards to Sqwish World actual damages sustained as a result of Defendant's federal trademark and federal unfair competition, increased by and up to three times, pursuant to 15 U.S.C. §1117;
 - G. Awards to Squish World statutory damages and attorney's fees, pursuant to 15 U.S.C. §1117;
 - H. Awards to Sqwish World costs and any additional damages to which Sqwish World is entitled as a result of Defendant's trademark infringement and unfair competition;
 - I. Awards to Sqwish World costs, pre-judgment and post-judgment interest at the maximum allowable rate, fees, and other such further relief as the Court deems just and proper.

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Tom Hendrickson
SEATTLE PATENT GROUP
4020 148TH Ave NE, Suite D
REDMOND, WASHINGTON 98052
TELEPHONE (425) 202-7969
tom@seattlepatentgroup.com

1 J. Awards to Sqwish World treble damages and attorney's fees as allowed by RCW
2 19.86.090.

3
4 DATED this 10th day of April, 2018.
5
6 Respectfully submitted,
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8
9 By /s/ Tom Hendrickson
10
11 TOM HENDRICKSON, WSBA# 41832
12 Attorney for the Sqwish World, LLC
13 SEATTLE PATENT GROUP
14 4020 148th Ave NE, Suite D
15 Redmond, WA 98052
16 (425) 202-7969
17 Tom Cell: (253) 256-2091
18 tom@seattlepatentgroup.com
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1 **JURY TRIAL DEMANDED**
2

3 Sqwish World demands a jury trial on all issues so triable.
4

5 DATED this 10th day of April, 2018.
6

7 Respectfully submitted,
8

9 By /s/ Tom Hendrickson
10

11 TOM HENDRICKSON, WSBA# 41832
12 Attorney for the Sqwish World, LLC
13 SEATTLE PATENT GROUP
14 4020 148th Ave NE, Suite D
15 Redmond, WA 98052
16 (425) 202-7969
17 Tom Cell: (253) 256-2091
18 tom@seattlepatentgroup.com
19

INDEX OF EXHIBITS

- Exhibit – A: Images Representative of Plaintiff’s Products
 - Exhibit – B: Combined Declarations of Use and Incontestability for Plaintiff’s Marks “SOFT’N SQUISHY” (B₁) and “IF IT’S SOFT ‘N SQUISHY, IT BELONGS IN SQWISHLAND” (B₂)
 - Exhibit – C: Images Representative of Defendant’s Products
 - Exhibit – D: Office Actions Received by Defendant’s for Their Trademark Application Numbers 87447533 (D₁) and 87447835 (D₂)
 - Exhibit – E: Second Cease and Desist Letter Sent by Plaintiff to Defendant on November 24, 2017.
 - Exhibit – F: Internet Search Results of the Term “SOFT’N SQUISHY” Obtained from Bing.com (F₁); Yahoo.com (F₂); and Google.com (F₃)
 - Exhibit – G: Search Results of the Term “SOFT’N SQUISHY” Obtained from On-Line Retailers Amazon.com (G₁) and Ebay.com (G₂)

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Tom Hendrickson
SEATTLE PATENT GROUP
4020 148TH Ave NE, Suite D
REDMOND, WASHINGTON 98052
TELEPHONE (425) 202-7969
tom@seattlepatentgroup.com